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April 22, 2013

Mr. Howard Wiggs  
City Commissioner  
City Hall  
228 S. Massachusetts Avenue  
Lakeland, Florida 33801

Re: Ledger Editorial dated April 18, 2013

Dear Commissioner Wiggs:

I have followed the various articles in the Ledger regarding the Grand Jury proceedings with respect to the Lakeland Police Department, and particularly the April 18, 2013 editorial entitled Grand Jury Report on Police: Lakeland Deserves to Know. It's important to appreciate that because grand jury proceedings occur under a court ordered seal, any related reports or opinions about such proceedings are necessarily based upon speculation and conjecture. The editorial, like several of the articles written on this topic, doesn't reflect an understanding of the law governing this proceeding. Further, this apparent fundamental misunderstanding of the grand jury process and the laws governing it has resulted in misstatements of law and unwarranted speculation on the contents of the grand jury report. Accordingly, I write to bring to your attention the laws governing such proceedings so that you may better understand the process and not be misled by opinion pieces and articles, based largely on speculation, that do nothing but malign the Lakeland Police Department and city officials.

It must be remembered that under Florida law, “[g]rand jury proceedings are secret,” see section 905.24, Florida Statutes, and “[i]t is unlawful for any person knowingly to publish, broadcast, disclose, divulge, or communicate . . . or knowingly to cause or permit to be published, broadcast, disclosed, divulged, or communicated . . . any testimony of a witness examined before the grand jury, or the content, gist, or import thereof, except when such testimony is or has been disclosed in a court proceeding,” see section 905.27, Florida Statutes.

For this reason, the legislature has provided certain safeguards for those individuals with which a grand jury report is “concerned” in order to ensure they are afforded due process. Specifically, under section 905.28, Florida Statutes, a grand jury report “relating to an individual which is not accompanied by a true bill or indictment is confidential and exempt” from the provisions of the Public Records Act, and such a report “shall not be made public or be published until the individual concerned has been furnished a copy thereof and given 15 days to file with the circuit court a motion to repress or expunge the report or that portion which is improper and unlawful.”

Florida courts have explained that “improper” portions of a grand jury report are those that lack a factual foundation in, or are not germane to, “the scope of the proceedings for which the grand jury was convened,” In re Grand Jury (Freeport School Project) Winter Term 1988, 544 So.2d 1104, 1106 (Fla. 1st DCA 1989), and “unlawful” as meaning “outside the lawful ambit of the grand jury’s authority.” In re

Mr. Howard Wiggs  
April 22, 2013  
Page 2

Grand Jury Investigation of Florida Dept. of Health and Rehabilitative Services, 659 So.2d 347, 349 (Fla. 1st DCA 1995); Roe v. Grand Jury, 970 So.2d 498 (Fla. 4th DCA 2007).

Contrary to the assertion in the April 18, 2013 Ledger editorial, legal action consistent with Florida laws governing grand jury reports do not constitute an “arrogant cover-up” by city officials. Rather, such action is consistent with the procedural safeguards afforded by the Florida legislature. Those safeguards have been characterized by the Florida Supreme Court as a proper stop against unfounded and unlawful charges levied by an entity, the grand jury, that operates not in the sunlight of a public trial, but in the shade of the grand jury room. Availing oneself of the due process safeguards that the law provides, is hardly an “arrogant cover up” as it was so irresponsibly called in the April 18th Ledger editorial. The Florida Supreme Court explained it this way:

“Unlike the opportunity for refutation which is available when adverse character or reputational matters are disclosed during the course of a public trial, there is no comparable opportunity to challenge grand jury report disclosures contemporaneously with their publication. These matters emerge from a grand jury process which has operated in secrecy, under the guidance of a prosecutor and the supervision of a judge to be sure, but where there has been no right to challenge witnesses or to be represented by counsel. It is possible, then, that the testimony and information presented to a grand jury, on which they must rely and report, is potentially one-sided and inaccurate. Thus, while one charged with the commission of a crime as a result of this process has a full opportunity for public clarification of misleading data and personal vindication through a public trial, no comparable means of vindication exists for one whose character is impugned in a report unaccompanied by indictment. It is undoubtedly for this reason that the legislature has now afforded an opportunity to prevent the publication of unfavorable material through the repression of matter that is “improper and unlawful.”

*Miami Herald Pub. Co. v. Marko*, 352 So.2d 518, 520-21 (Fla. 1977).

The “legal maneuvering,” as the Ledger editorial characterizes it, is nothing more than a legislatively authorized request by those referenced in such reports for due process – the opportunity to respond to “improper or unlawful” statements that may accomplish nothing more than to impugn the personal and professional reputations of those involved. Any suggestion to the contrary is in ignorance of the law, the due process rights afforded by law, and is an affront to the judicial system and the rights it protects.

This matter will be decided in the courts, which will apply the principles outlined above, not on the pages of a newspaper. I will keep you informed to the extent permitted by the Court’s orders.

Sincerely,

  
Mark N. Miller

MNM  
# 1382881 v1

Signed in the Absence of  
Mark N. Miller  
to avoid delay in mailing

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April 18, 2013

Mr. Howard Wiggs  
City Commissioner  
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228 S Massachusetts Avenue  
Lakeland, Florida 33801

Re: Ledger Editorial of April 18, 2013

Dear Commissioner Wiggs:

I have read the above referenced Ledger editorial entitled *Grand Jury Report on Police: Lakeland Deserves To Know*. It is obvious that the author of that editorial, as well as the authors of recent news articles in the same vein, do not understand the laws of the State of Florida. If the personnel at The Ledger disagree with the law in this area, their remedy is to seek changes in the law from the Florida Legislature, not denigrate those, like Chief Womack and other City officials, who are following the law.

I think it most appropriate to bring to your attention the language of the Florida Supreme Court in the *Miami Herald Publishing Company v. Marko* case wherein the Supreme Court stated:

These matters emerge from a grand jury process which has operated in secrecy, under the guidance of a prosecutor and the supervision of a judge to be sure, but where there has been no right to challenge witnesses or to be represented by counsel. It is possible, then, that the testimony and information presented to the grand jury, on which they must rely and report, is potentially one-sided and inaccurate. Thus, while one charged with the commission of a crime as a result of this process has a full opportunity for public clarification of misleading data and personal vindication through a public trial, no comparable means of vindication exists for one whose character is impugned in a report unaccompanied by indictment. It is undoubtedly for this

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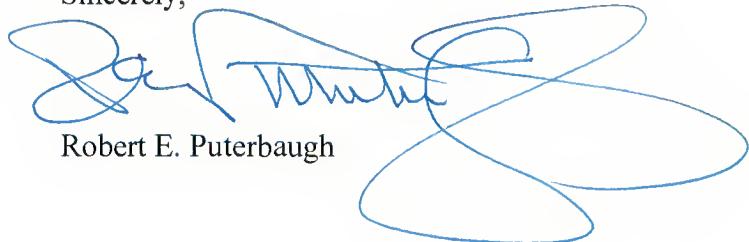
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reason that the legislature has now afforded an opportunity to prevent the publication of unfavorable material through repression of matter that is "improper and unlawful".

Sincerely,

A handwritten signature in blue ink, appearing to read "Bob Puterbaugh". The signature is somewhat fluid and cursive, with a large, stylized 'B' at the beginning.

Robert E. Puterbaugh